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NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

ORIGINAL

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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF AN INQUIRY INTO
THE PRACTICE OF CHIROPRACTIC BY:

JOSEPH FALZONE, D.C.

LICENSED TO PRACTICE CHIROPRACTIC
IN THE STATE OF NEW JERSEY

Administrative Action

FINAL ORDER

This matter was presented to the New Jersey State Board of Medical Examiners on inquiry regarding the chiropractic management of two patients by Dr. Falzone, License #02305, who practices at 2791 Nottingham Way, Trenton, New Jersey 08619.

Mrs. E. MacG. consulted respondent on March 4, 1985 complaining of left shoulder pain which she believed to be bursitis. She was directed by respondent to a radiologist for some 12 x-rays and she then returned to respondent on the same day for follow-up care. He prescribed ice, and ultrasound in addition to chiropractic manipulations and he treated her for a total of 24 visits between March 4 and May 7, 1985 when she unilaterally

stopped treatment after finding that she was afforded no relief. The patient complains that respondent billed separately for the various components of the first day's visit, that respondent hired "young girls" to give treatments to the patients but never checked on them during administration thereof; that she refused several treatments because she was afraid of the machines being used but was billed for such treatments anyway, and that "The young girls would ask you -- "Do you want hot or cold pack on your shoulder?"

Respondent's billing is as follows:

Consultation \$15, Comprehensive Examination \$60, Office Visit \$30, (twice) and "Physical Therapy" \$15, all for services rendered on the same day. Thereafter, virtually all listed treatment dates include reference to ice, ultrasound, and moist heat, in addition to spinal manipulation, with many of the visit dates apparently including both ice and heat to the same area. There is no indication in the record of who administered the physical modalities or that instructions had been given or the treatment supervised -- which are the only circumstances when physical modalities may be administered by an unlicensed person pursuant to N.J.A.C. 13:35-6.14. There is no modification of the billing to reflect the administration of services by unlicensed persons as required by N.J.A.C. 13:35-6.14. The total service bill for the two months of treatments was \$1155. Her insurance carrier paid respondent \$736.

The Board has considerable reservations about the accuracy of the patient record, and notes that if, in fact, the

patient merely had a bursitis in one shoulder (as she believes), the extent and frequency of chiropractic and physical modality treatment listed and billed here would have been inappropriate. It is, however, difficult to assess that situation at this point. The Board does observe that, based on respondent's own records, the patient began the consultation with pain in the left shoulder and the patient record reports cervical problems only after the physical modalities were applied (by the unlicensed staff, as admitted by Dr. Falzone). We also note that ultrasound was regularly administered by unlicensed staff to this 67-year old lady, and no question was ever asked regarding whether she had a pacemaker or any other condition which would have contraindicated the use of such a device in or near the pertinent area.

With respect to respondent's management of patient Mrs. MacG., the Board finds that

(1) His billing was improper in that he arbitrarily and improperly fractionated his fees by billing separately for consultation and examination, by billing for two office visits on the same day when the visits were separated only because he sent the patient out for x-rays, and by billing for "physical therapy" as a separate service, and by failing to reduce the charge for physical modalities even though administered by unlicensed staff.

(2) He improperly delegated professional therapy services to unlicensed staff by failing to assure meticulous compliance with the requirements of N.J.A.C. 13:35-6.14, thus

exposing the patient to incompetent and/or negligent and/or risky therapeutic measures.

Inquiry has also been made regarding chiropractic management and billing for patient Mr. B.McV. This patient was a 22-year old man who suffered an injury in the course of his employment on January 22, 1985. He apparently first consulted C. Arenas, M.D. on January 23, 1985 who ordered an x-ray of the lumbosacral spine which was interpreted as showing straightening which might be secondary to muscle spasm. The alignment of vertebral bodies was interpreted as normal with no evidence of compression fracture or disc spacing narrowing.

On January 25, 1985 the patient consulted Dr. Falzone with a complaint of lower back pain traveling down left leg to foot. Dr. Falzone's patient record thereafter records 47 visits (sometimes twice on the same day) until April 24, 1985 when treatment suddenly stopped. Most of the visits are on consecutive days and most are billed at \$45 each, in addition to the first visit of \$95 and another visit at \$53. Total billing until the sudden cessation was \$2,200. The records contain an examination test form which is printed as a part of an insurance claim form, and other test forms. The record contains exactly one page describing the patient's examination on the first visit date as well as a progress note dated March 15, 1985. There are no progress notes for any of the other 45 visits. Nor are there any notes recounting any subjective complaints or notations of improvement or lack thereof in the patient's condition.

Notwithstanding the x-ray report, Dr. Falzone informed the patient's insurance carrier that there was a disc injury at L5-S1 with a radicular component and described some symptoms. He indicated that he had applied mild spinal manipulation and "physical therapy" using ultrasound, cryotherapy and moist heat (together).

Asked to explain his preparation of patient records Dr. Falzone explained that, as he did not have any many patients, he did not need to record his professional encounters with the patient because he could remember what he did and the patient's progress from day to day. Regarding the billing for "physical therapy," he indicated that he has since become aware that this is impermissible under the Physical Therapy Practice Act and under Medical Board rule N.J.A.C. 13:35-7.1. He also noted that he has since learned it was improper for him to list an identical diagnosis for the patient some two months after submitting the first insurance form, since he claims that the patient did in fact show improvement. Asked about the abrupt cessation of treatment when the patient had been seen so frequently up to that point, Dr. Falzone explained that the patient had been seen by an independent examiner and then never returned. Dr. Falzone chose not to do any follow-up of his patient and never inquired thereafter as to the patient's condition.

We note that Dr. Falzone's report to the insurance carrier claims that the patient suffered a disc injury, but the x-ray report indicates that the patient did not have a disc problem

and merely had a soft tissue injury. Asked about this discrepancy, Dr. Falzone insists the patient did have a disc problem accompanying the muscle spasms and that it was of such severity as to warrant the almost daily chiropractic visits and also a recommendation for bed rest and ice (not shown in the patient record). No other referral was ever made during the 47 visits for treatment of the disc problem.

Although Dr. Falzone claimed not to know why his patient had suddenly stopped coming after April 24, 1985, we have learned that on April 23, 1985 the patient was examined by William J. Moore, M.D. who found normal physiological curve of the cervical, thoracic and lumbar areas; full range of motion of the lumbar vertebrae, and flexion, extension and lateral duration without limitation or pain on movement. Other than a reported "pulling sensation," and some tightness of certain muscles, all tests including straight leg raising and Lasegue test were negative. The physician found no need for any further diagnostic procedures or treatment other than "routine exercises." It appears that Dr. Falzone was in fact specifically notified on April 26 that the insurer would no longer pay for his treatment.

The Board finds that this patient record is seriously deficient in documentation sufficient to warrant the extent and frequency of chiropractic visits shown here, conduct which is deemed to be misrepresentation and professional misconduct; N.J.S.A. 45:1-21(b) and (e). The billing is also improper with respect to excessive fees: N.J.A.C. 13:35-6.11, and for

making charges for physical therapy: N.J.A.C. 13:35-7.1; N.J.S.A. 45:1-21 (e) and (h).

In summary, there were three major improprieties in the management of Mr. B. McV., and two major improprieties in the management of Mrs. MacG. For sufficient cause shown,

IT IS on this *16th* day of *December*, 1986

ORDERED:

1. Respondent Joseph A. Falzone, D.C. is hereby reprimanded for the above unlawful conduct.

2. Respondent is directed to refund to Mr. B. McV. and/or the third party payor the sum of \$1170 (\$1320 - 150 for the only two visits supported by progress notes).

3. Respondent is assessed a monetary penalty of \$500 for each of the five types of improper conduct discussed above, totalling \$2,500, payable to the State Board of Medical Examiners.

4. All reimbursements and penalties are to be paid within 10 days of the entry of this Order.

5. Respondent shall cease and desist from the above unlawful conduct. He shall henceforth carefully examine and document his findings in a proper patient record maintained in accordance with rules of the Board. He shall provide chiropractic services only for conditions amenable to chiropractic care, preparing a proper patient record to document examinations given and results thereof and appropriate progress notes. Performance of daily chiropractic adjustments (as with Mr. McV.) are deemed without physiological merit and outside of accepted standards of

chiropractic practice. Further, if patient improvement is not demonstrated within a reasonable time, the practitioner is expected to make appropriate referral for further diagnostic workup.

6. Respondent shall document the chiropractic indication for any physical modalities prescribed (as with Mrs. McG), the administrator and the supervisor of those modalities in accordance with Board rule, and the preparation of contemporaneous progress notes documenting the patient's treatment status. He shall determine professional fees in accordance with accepted standards of practice and the reasonable expectations of the public particularly with respect to services rendered within and and referred outside of the office, and shall discuss requested fees with all patients in advance.

This Order shall be effective upon entry.

STATE BOARD OF MEDICAL EXAMINERS

By Edward W. Luka M.D.
Edward W. Luka, M.D.
President

I Consent to the Terms and
Entry of the Within Order

Joseph A. Falzone P.C.
Joseph A. Falzone, D.C.